

The rule appears to be perfectly well settled, that a mortgagee may sue at the same time at law upon his bond or covenant, and in equity upon his mortgage; the case of a mortgage forming an exception to the general rule, that a party shall not be permitted to sue at law and here, at the same time, for the same debt. Indeed, the general rule itself applies only to cases where the demand at law and in equity are equally personal, and not where the cumulative remedy is in *personam*, while the other remedy is upon the pledge. The remedy in this court, upon the mortgage, is in *rem*, and that at law in *personam*. *Dunkley vs. Van Buren*, 3 *Johns. Ch. Rep.*, 330; *Jones vs. Conde*, 6 *Johns. Ch. Rep.*, 77.

In 4 *Kent*, 183, the Chancellor says: "The general rule is, that the mortgagee may exercise all his rights at the same time, and pursue his remedy in equity upon the mortgage, and his remedy at law upon the bond or covenant accompanying it, concurrently."

The counsel for the defendant supposes that the rule upon this subject in New York, is founded upon the prohibition now existing there, which forbids the sale at law of the mortgagor's equity of redemption.

But the rule permitting the mortgagee to pursue his remedies at law and in equity, existed prior to the prohibition, which is the creature of the revised statutes, and cannot, therefore, be founded upon it. It is true, as suggested by the commentator, there were, before the statute, difficulties attending the sale of the equity of redemption; but these difficulties did not induce the Court of Chancery to forbid the mortgagee to proceed at the same time at law and in equity; though they subsequently induced the legislature to interdict the sale at law of the mortgagor's interest.

The argument of the defendant's solicitor in this case is, that, as the judgment and execution at law will give the creditor all the advantages of a decree, and, indeed, advantages which the decree will not give, there can be no necessity for harassing the defendant with a double suit, and subjecting him to useless costs. It is by no means so clear, however, that the